

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

IN RE PHARMACEUTICAL INDUSTRY) **MDL No. 1456**
AVERAGE WHOLESALE PRICE LITIGATION) **Master File No. 01-12257-PBS**
) **Subcategory Case No. 06-11337**
)
) **Judge Patti B. Saris**
THIS DOCUMENT RELATES TO:)
State of California, ex rel. Ven-A-Care of the)
Florida Keys, Inc. v. Abbott Laboratories, Inc., et al.)
Case No: 03-cv-11226-PBS)
)

STATUS REPORT – APRIL 1, 2011

The undersigned counsel, on behalf of plaintiff State of California, hereby submits the attached Status Report in accordance with the Court's June 17, 2004, Procedural Order.

Respectfully submitted,

KAMALA D. HARRIS
Attorney General for the State of California

Dated: April 1, 2011

By: */s/ Nicholas N. Paul*
NICHOLAS N. PAUL
CA State Bar No: 190605
Supervising Deputy Attorney General
Bureau of Medi-Cal Fraud and Elder Abuse
Office of the Attorney General
San Diego, California 92108
Tel: (619) 688-6099
Fax: (619) 688-4200

**Attorneys for Plaintiff,
STATE OF CALIFORNIA**

MDL 1456 Status Report
State of California, ex rel. Ven-A-Care v. Abbott Laboratories Inc., et al.
Case No.: 1:03-cv-11226-PBS

First Amended Complaint in Intervention

Plaintiffs filed a First Amended Complaint in Intervention (FAC), with redacted exhibits, on August 25, 2005. (Master File 01-12257, Dkt. No. 1679). Plaintiffs also filed a motion for leave to file unredacted Exhibits under seal (Exs. A-K & M-R to the FAC), (Master File 01-12257, Dkt. Nos. 1680, 1703), which the Court granted via electronic order.

Motions to Dismiss

On January 17, 2006, Defendants filed a Joint Motion to Dismiss Plaintiffs' First Amended Complaint in Intervention. (Master File 01-12257, Dkt. Nos. 2047, 2051.)

On March 22, 2007, the Court denied in part and granted in part Defendants' joint motion to dismiss, and denied Abbott's motion to dismiss. (Master File 01-12257, Dkt. No. 3948.)

Case Management Order (CMO)

The Court entered Case Management Order 31 on August 1, 2007. (Master File 01-12257, Dkt. No. 4586.) Case Management Order 35 was entered on November 4, 2008. (Master File 01-12257, Dkt. No. 5664.) Pursuant to the Court's request, on February 20, 2009, the parties filed a Joint Motion for Entry of Proposed Amendment to Case Management Order No. 31. (Master File 01-12257, Dkt. No. 5920; Subcat. File 06-11337, Dkt. No. 182.) The motion and amended CMO were granted by the Court on March 4, 2009. (Master File 01-12257, Dkt. No. 5942; Subcat. File 06-11337, Dkt. No. 186.)

The parties filed a Joint Motion to Set Revised Briefing Schedule for Motions for Summary Judgment and to Amend CMO 31 on October 16, 2009, (Master File 01-12257, Dkt. No. 6597; Subcat. File 06-11337, Dkt. No. 497), which was granted on October 28, 2009.

Alternative Dispute Resolution

The parties engaged in mediation with Professor Eric Green in April 2009, with negative results. A renewed round of mediation with Professor Green and one Defendant took place on December 6, 2010, with negative results.

Other Resolution

On December 23, 2010, Plaintiffs filed two Stipulated Dismissals as to Defendants Dey Pharma, L.P. and Dey, Inc., with two proposed orders (Master File 01-12257, Dkt. Nos. 7361-62; Subcat. File 06-11337, Dkt. Nos. 842-43). Orders of Dismissal were entered on January 5, 2011 (Master File 01-12257, Dkt. Nos. 7377-78; Subcat. File 06-11337, Dkt. Nos. 851-52).

Pending Matters

Discovery Motions:

On August 21, 2009, Defendants filed their Motion for an Order Granting Leave to Take Deposition Out of Time, seeking to take the deposition of Thomas Ahrens after the discovery cut-off date of June 15, 2009. (Master File 01-12257, Dkt. No. 6394; Subcat. File 06-11337, Dkt. No. 376.) Also on August 21, 2009, Defendant Sandoz Inc. filed its Motion to Determine the Sufficiency of Plaintiff State of California's Response to Sandoz Inc.'s First Set of Requests for Admission. (Master File 01-12257, Dkt. No. 6392; Subcat. File 06-11337, Dkt. No. 373.) Plaintiff filed its oppositions to Defendants' motions on September 4, 2009 (Master File 01-12257, Dkt. Nos. 6480-82; Subcat. File 06-11337, Dkt. Nos. 436-37.)

No hearing has been set, nor have orders been issued, on these motions.

Summary Judgment Motions:

On November 24, 2009, Plaintiffs filed a Motion for Partial Summary Judgment. (Master File 01-12257, Dkt. Nos. 6685-92, 6714-15; Subcat. File 06-11337, Dkt. Nos. 547-54, 573, 575.)

On November 25, 2009, Defendants filed a Joint Motion for Partial Summary Judgment. (Master File 01-12257, Dkt. Nos. 6702-03, 6710; Subcat. File 06-11337, Dkt. Nos. 563-65.) Defendants also filed three individual Motions for Summary Judgment on November 25, 2009. (Master File 01-12257, Dkt. Nos. 6694-700, 6704-05, 6707-09, 6711; Subcat. File 06-11337, Dkt. Nos. 555-60, 562, 565, 567-71.)

On December 21, 2009, Plaintiffs filed their opposition briefs to Defendants' joint and individual Motions for Partial Summary Judgment. (Master File 01-12257, Dkt. Nos. 6779-92; Subcat. File 06-11337, Dkt. Nos. 615-28.) Defendants also filed their opposition to Plaintiffs' Joint Motion for Partial Summary Judgment (Master File 01-12257, Dkt. Nos. 6793-801; Subcat. File 06-11337, Dkt. Nos. 629-37.)

On January 15, 2010, Plaintiffs filed their reply in support of their Motion for Partial Summary Judgment. (Master File 01-12257, Dkt. No. 6842; Subcat. File 06-11337 Dkt. No. 650.) Relator, Ven-A-Care of the Florida Keys, Inc., filed a separate Reply to Defendants' Joint Brief in Opposition to Plaintiffs' Motion for Partial Summary Judgment. (Master File 01-12257, Dkt. No. 6843; Subcat. File 06-11337, Dkt. No. 659.)

Also, on January 15, 2010, Defendants filed their reply briefs in support of their joint and individual motions for partial summary judgment. (Master File 01-12257, Dkt. Nos. 6837-41, 6844-48; Subcat. File 06-11337, Dkt. No. 648-49, 652-58.)

On January 29, 2010, Plaintiffs filed their sur-reply briefs in opposition to Defendants' joint and individual motions for partial summary judgment. (Master File 01-12257, Dkt. Nos.

6872-76, 6878; Subcat. File 06-11337, Dkt. Nos. 668-73.) Defendants also filed their sur-reply in opposition to Plaintiffs' motion for partial summary judgment. (Master File 01-12257, Dkt. Nos. 6877, 6879; Subcat. File 06-11337, Dkt. Nos. 674-75.)

Plaintiffs' and Defendants' motions for summary judgment were heard on February 8, 2011, and the Court has not yet ruled on the motions. No progress has occurred between the parties regarding settlement, although negotiations continue with one Defendant.

Miscellaneous Motion(s):

Defendants filed a Motion for Remand November 25, 2009. (Master File 01-12257, Dkt. No. 6701; Subcat. File 06-11337, Dkt. No. 561.) Plaintiffs filed their opposition to the motion on December 9, 2009. (Master File 01-12257, Dkt. No. 6749; Subcat. File 06-11337, Dkt. No. 596.) The motion was heard on February 8, 2011. A ruling has yet to be issued.

CERTIFICATE OF SERVICE

I, Nicholas N. Paul, hereby certify that on April 1, 2011, I caused a true and correct copy of the foregoing, **Status Report–April 1, 2011**, to be served on all counsel of record via electronic service pursuant to Paragraph 11 of Case Management Order No. 2, by sending a copy to LexisNexis File & Serve for posting and notification to all parties.

/s/ Nicholas N. Paul
NICHOLAS N. PAUL